

# A Legal and Social Framework for the Inclusion of Persons with Disability through Accessible Tourism and Transportation by Bus

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## Abstract

National, European, and international institutions should implement social policies to help the persons with disabilities. Strategic sectors include education, training, and work, with the equal protection of the laws. In addition, this essay is focused on another crucial "sector" that is part of the (European) primary law, which include tourism along with public transportation and non-discrimination. In conclusion, legislators, and public institutions, as well as transport companies must comply the principles of accessibility, equality, and social justice for the social inclusion of persons with disabilities.

**Keywords:** *Accessibility, Disability, Equality, EU, CRPD.*

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## 1. The Principle of Equality and Solidarity as Instruments of Law for a Transport Market Accessible to Persons with Disabilities

The recent European strategies for the social inclusion of persons with disabilities<sup>1</sup> – from now on “PwDs” – have focused on self-regulate markets for a long time, causing marginalisation of PwDs as a vulnerable customers and vulnerable people (for their own physical, social, and economic conditions). Nowadays, the European policy asks member States to respect the equality principle and the social justice, in a double meaning: in a positive way, i.e. as “equal opportunity”, and in a negative way, i.e. as “non-discrimination”. Furthermore, Italian Constitution recognizes the equality principle both as a prohibition of discrimination based on biological and cultural reasons, and as effort to remove the conditions that don’t allow these people to grow up in the society<sup>2</sup>. Article No. 3, sub. 2 of the Italian Constitution asks the protection of social justice and it <<assumes the value as an historical and permanent choice>><sup>3</sup>. This is a useful tool to exclude unjustified privileges<sup>4</sup>. The law No. 67/07<sup>5</sup> – “Measures for judicial protection of persons with disabilities who are victims of discrimination” – is a guarantee, but it needs a support by information activities on the rights of PwDs. It also needs social campaigns aimed to prevent discrimination and disputes.

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<sup>1</sup> The number of disabled people in Europe at the beginning of the new millennium is one-sixth of the population and it is increasing. With the EU-28, the employment rate of PwD did not reach 50%, causing a risk of poverty for about one-third of those in working age. It is proper to devote attention to this group of people who are still unable to find a definite position into society nowadays. Strategic fields are, i.e. training and in work: failure in these areas would mean condemning them to be isolated and precluding economic independence and autonomy as well. The attention that the institutions of the European and International level have devoted them, shows they are crucial for the enhancement and standardisation of PwD. However, there something more to do in these issues of life and many others.

<sup>2</sup> P. PERLINGIERI, *Il diritto civile nella legalità costituzionale secondo il sistema italo comunitario delle fonti*, Tomo II, ed. III, Edizioni Scientifiche Italiane, Napoli, 2006, p. 448. On the State's commitment to removing barriers to the persons development: P. PERLINGIERI, *Eguaglianza, Capacità contributiva e diritto civile*, 1980, p. 135 ff.; R. DWORKIN, *Eguaglianza*, in *Enc. Sc. Soc.* Treccani, III, Roma, 1993, p. 478 ff.; N. BOBBIO, *Eguaglianza e libertà*, Torino, 1995, p. 22 ff.

<sup>3</sup> P. PERLINGIERI, *Il diritto civile nella legalità costituzionale*, (Note No 2), p. 455.

<sup>4</sup> Cf. P. PERLINGIERI, *Eguaglianza*, (Note No 2), p. 147. Especially, subparagraph 1 and 2, art. 3 of Italian Constitution should be read in a uniform sense because they lay down a unique regulation, which is equality: L. PALADIN in “*In tema di leggi personali*”, in *Giur. cost.*, 1961, p. 1262 ff., talks of ontological and substantive differences. Furthermore, A. CERRI, in “*Regime delle questue: violazione del principio di eguaglianza e tutela del diritto alla riservatezza*”, in *Giur. cost.*, 1972, p. 48 ff., thinks that ‘reasonableness’ refers to the natural human rationality, Cf. P. PERGLINGERI, (Note No 3), p. 450 ff.

<sup>5</sup> In *Gazzetta Ufficiale* No. 54, March 6<sup>th</sup>, 2006.

Sometime, interventions aimed to overcome social obstacles are not enough, but what it is necessary is just to realize a positive value. So, the equality principle could be violated both when equal situations are subjected to different treatment (without any significant justification in harmony with the constitutional system of principles) and when individuals acting into unequally situations, receive identical treatment<sup>6</sup>.

European policy takes motivation from the awareness of how much pervasive the market can be as an institution; and how it can crop its own rules aimed at deciding prices<sup>7</sup> and managing human behaviours<sup>8</sup>. This concept of freedom, assuming also constitutional relevance, becomes a “flag” of the liberal political movement and it has been so emphasized that it ends to be setting of an unceasing conflict as P. Perlingieri says literally: <<*rischiando ... di relegare la dignità personale a semplice valore di scambio esponendo i soggetti deboli, sopraffatti o sfruttati, alla marginalità*>><sup>9</sup>, which means that human dignity risks to become simply exchange goods, and the marginalization of frail people take origin from this conception.

The result is an inevitable weakening of social relations<sup>10</sup>. In that direction, general opinion concluded that the market created this world system, and no one could change it<sup>11</sup>. Historically, in the last twenty-five years, political compromises have reduced this conflict, but however on the other side it has entailed the inevitable weakening of democracy. A better solution should be a cooperation between market and democracy. Likewise, on the 'conflict' (the relationship between democracy and market), someone reflects also on the existence of an “anarchist egoism” of the market, in which there is no space for solidarity into human relationships. The failure of the power of the State is the

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<sup>6</sup> Constitutional Court judgment No 15 of 1960 (in *Giur. cost.*, 1960, p. 147 ff., annotation of L. PALADIN, *Una questione di eguaglianza nell'accesso ai pubblici uffici: <<Una differenza di trattamento è giustificata se si fonda su un criterio obiettivo e ragionevole, vale a dire qualora essa sia rapportata a un legittimo scopo perseguito dalla normativa in questione e tale differenza sia proporzionata allo scopo perseguito dal trattamento di cui trattasi>>*). It means that we may justify different treatments if they are based on an objective and reasonable criterion, aimed to pursue the legislation goals, in relation to that specific case. As well Arcelor Atlantique et Lorraine and others, C 127/07, EU:C:2008:728, n° 47, and Schaible, C 101/12, EU:C:2013:661, n° 77).

<sup>7</sup> P. PERLINGIERI, *Iniziativa economica, solidarietà sociale e diritti della persona*, in *Rass. dir. civ.*, 1995, p. 84 ff.

<sup>8</sup> M.R. FERRARESE, *Diritto e mercato. Il caso degli Stati Uniti*, Giappichelli, Torino, 1992 p. 20. The author orders various market meanings in four categories: a) market as place; b) market as an ideology; c) Market as a paradigm of social action; d) Market as institution; p. 17. On Institutional theories, F. LOMBARDI and R. MOTTA, *Traffici e mercati: l'istituzionalismo* of Karl Polany, in *Mat. St. cult. giur.*, 1980, p. 231 ff.

<sup>9</sup> P. PERGLINGERI, (Note No 3), p. 475.

<sup>10</sup> M.R. FERRARESE, (Note No 8), p. 42.

<sup>11</sup> Cf. S. ZAMAGNI, L. BRUNI *L'economia civile, Un'altra idea di mercato*, Il Mulino, Bologna, 2015, p. 24 f.

result; a market system in which the State loses the control, defined as an economic “deregulation”<sup>12</sup>. Furthermore, the consequence is the need to find ethical and legal-political restrictions imposed by human behaviour<sup>13</sup>. How get out of that situation? “Third sector” experts suggest the Law to regulate society. Through a system of checks and balances, the Law should aim to ensure not only “richness” but also other specific values<sup>14</sup>, such as solidarity<sup>15</sup> and reciprocity, as well as prize culture<sup>16</sup>, according to the logic of a “civil economy”, as a form of civilization in which civil virtue, public happiness and institutions take the place of the egoism (but different from the Hobbesian state of nature)<sup>17</sup>. Differently the weak people run the risk of the marginality.

In this way the inaccessibility to services and the dissatisfaction of their needs have forced PwDs to live in a state of marginalization.

Effectively, in the last twenty-years, European policies have been trying to reverse this trend, offering joint actions in several strategic areas: education, employment, health, etc. Tourism, for example, is an important sector for social aggregation. Moreover, the transportation stands for not only a crucial aspect of tourism but also of the other strategic sectors, mentioned previously. Accessibility policies let PwDs to participate in each field above mentioned, but also, they make them part of the social life, giving civic, social and economic benefits.

According to the European policy, benefits and opportunities offered by travel and tourism should granting also to disabled people to those conditions of comfort and security currently available to all other European citizens<sup>18</sup>. Consequently, the accessible transportation is a right to everyone; carriers, terminal managing bodies, and tour operators cannot refuse to provide services

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<sup>12</sup> Cf. P. PERGLINGERI, (Note No 3), p. 475 ff., where he talks on *deregulation* which, on the constitutional level, leads to delimit the powers of intervention, legislation and administrative, in economic matters: <<*Costituzionalismo Economico*>> (Economic constitutionalism).

<sup>13</sup> J.M. BUCHANAN, *Buona economia – Cattivo diritto*, in *Libertà nel contratto costituzionale*, Il Saggiatore, Milano, 1990, p. 48.

<sup>14</sup> Cf. A. SEN, *Etica ed economia*, Laterza, Roma-Bari, 2002, p. 19 ff.

<sup>15</sup> On ‘solidarity’ as a prerequisite of the primacy of the “political” on the economic field: P. PERLINGIERI, *Economia in bilico, tra pubblico e privato: una formula per la crisi?* in *Riv. di diritto dell’impresa* 2/1982, p. 231.

<sup>16</sup> Cf. S. ZAMAGNI, L. BRUNI, (Note No 11), p. 76, in which, as ‘Genovesi’ said, they speak of selfishness and social altruism as <<*forza primitiva*>> (primitive force), stigmatizing the latter as <<*virtuosa*>> (virtuous), and which needs of special <<*premi*>> (prizes) so that it does not die.

<sup>17</sup> *Ibid.*, p. 43.

<sup>18</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe’, aimed to the social inclusion, well-being, and to the full exercise of their rights.

to a person solely for disability's reason or reduced mobility. They have the duty<sup>19</sup> of ensure adequate information and travel offers to the PwDs, to let them enjoy their free time at normal price.

Firstly, this work intends to consider tourism as a significant instrument of social integration, highlighting the recent European transportation policy dedicated to the disabled passenger needs, which forecast a mandatory staff training as a prerequisite to ensure quality service. Secondly it tries to brief stakeholders<sup>20</sup> on the accessibility, providing them information aimed to ensure good assistance as well, as bases for equality and social inclusion of PwDs.

## **2. Tourism as a Tool of Social Inclusion According to European and International Policies on Disability.**

The *European Disability Strategy 2010-2020*<sup>21</sup> (from now on "Strategy 2010-2020") and the *United Nations Convention on the rights of persons with disabilities* (2006)<sup>22</sup> (from now on "CRPD") are the main sources for the rights and protection of persons with disabilities. According to them tourism is a fundamental and strategic area to promote the inclusion of PwDs; to find confirmation in these sources it is crucial knowing briefly their historical course.

The Strategy 2010-2020 and the CRPD are the result of a social and political process matured over more than half a century. Their aim is to abolish discrimination and marginalization, allowing PwDs – on a basis of equality with other individuals – the real exercise of their rights. As well, to benefit from a full and autonomous participation in social and economic processes.

Thanks to the *Disability Strategy* (1996)<sup>23</sup>, European Community has worked more carefully than in the past<sup>24</sup> to correct social distortions and to

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<sup>19</sup> As the European and International rules require about free and independence mobility.

<sup>20</sup> Transport companies, tour operators, travel agencies, representative organizations of PwD, etc.

<sup>21</sup> 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe'

<sup>22</sup> The CRPD was approved on December 13<sup>th</sup>, 2006 by the UN General Assembly and entered into force on May 3<sup>rd</sup>, 2008. The EU ratified it by Council decision 2010/48/EC of November 26<sup>th</sup>, 2009, but the deposit of ratification at the United Nations was only December 23<sup>rd</sup>, 2010. Italy, by law n ° 18 of March 2<sup>nd</sup>, 2009 (published in the Official Gazette No. 61 of March 14<sup>th</sup>, 2009) has ratified and made it enforceable.

<sup>23</sup> Communication of the Commission on equality of opportunities for people with disabilities, *A new European Community Disability Strategy*, Brussels, July 30<sup>th</sup>, 1996, COM (96) 406 final.

<sup>24</sup> The European Community has begun to deal with disability since the second half of the 1970s, in a mostly marginal manner, by lightening the States from any instrument that binds them. Waddington L., Diller M., *Tensions and coherence in disability policy: the uneasy relationship between social welfare and civil rights models of disability in American, European*

protect a full power of the rights of those who has any kind of physical or psychic impairment. It proposed <<a stronger emphasis on identifying and removing the various barriers to equal opportunities and full participation in all aspects of life>><sup>25</sup>, to let PwDs contribute to the economic and social development.

This plan was inspired by the *Standard rules on the Equalization of Opportunities for Persons with Disabilities* (1993)<sup>26</sup> and by the “International Year Disabled Persons” (1981), followed by the “*World Program of Action concerning disabled Person*”<sup>27</sup>. Since then, a new vision of the *Handicap* is the result of the relationship between PwDs and their environment<sup>28</sup>.

From a mere assistance approach, we are moving to an inclusive one, in which emerges the need to know what disability is and how to involve PwDs into dynamic social aspects; it becomes essential identifying and exalting the abilities of everyone, transforming them from passive persons to active citizens, able to produce for themselves and for the society.

These goals are achievable through the affirmation of the rights and the principles of autonomy, dignity, independence, non-discrimination. Thanks to the Disabled Strategy (1996) the Member States have been invited to examine their national policies in order to achieve equal opportunities for PwDs in all strategic sectors: education, training, employment, health, social services, information and leisure time.

Therefore, this greater awareness of the necessity to protect the rights of PwDs and their families has encouraged the development of a new strategy,

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and international employment law, disability rights law and policy, Ardsley, transnational Publishers, 2002, pp 241-244.

<sup>25</sup> Communication of the Commission on equality of opportunities for people with disabilities, quoted above, *Executive Summary and Policy Conclusions*, p. 1.

<sup>26</sup> Adopted by the United Nations General Assembly with Resolution of December 20<sup>th</sup>, 1993, 48/96.

<sup>27</sup> Adopted by the United Nations General Assembly with resolution 37152 of 3<sup>rd</sup> December 1982.

<sup>28</sup> This vision moves from the so-called social model of disability, for which the conditions of "diversity" of the disabled arise from the social factors and are not direct consequence of the impairment of the individual. The "incapacities" depend, therefore, on personal, environmental, economic, institutional factors, etc. We move away from the traditional conception based on the medical approach (limited only to provide for care and assistance) taking into consideration the social model as a keystone for new social policies (without architectural, psychological and relational barriers). Today, moreover, an additional model of interpretation of disability has been added, the so-called *Capability approach*, taken up by Amartya Sen and contextualized in the field of disabilities, through which it is possible to decipher social barriers and to place people with disabilities at the center of the decision-making process. This type of approach emphasizes the skills and awareness (any kind) transmitted and acquired through a life project. Cf. R. BARBUTO; M. BIGGERI; G. GRIFFO, *Life Project, peer counselling and self-help groups as tools to expand capabilities, agency and Human Rights*, Alter-European Journal of disability research, Revue européen de recherche sur le Handicap, 2011, vol. 5, No. 3, pp. 192-205.

adopted by the European Commission simultaneously with the ratification of the CRPD. The Strategy 2010-2020 allows the EU and its member States to give effect to the provisions of the CRPD<sup>29</sup> identifying the social necessities and rights that might require greater protection and development<sup>30</sup>, that are “accessibility, participation, equality, employment, education and training, social protection, health, external action”: EU and its Member States<sup>31</sup> represent a real instrument to protect and safeguard all human rights.

CRPD drives Member States of the General Assembly to adopt laws to prevent social diversity protecting any form of *handicap*; it strives to be a concrete tool against discrimination and human rights violations, in favour of all PwDs in the various social fields, from education to leisure<sup>32</sup>.

Then, considering this analysis, society cannot longer exclude PwDs from those activities useful to give course to the primary and natural vocation of the man: the socialization. Tourism, as a special form of leisure, appears a crucial field of inclusion because of its great types of proposals.

For this reason, Tourism, same as many other sectors, must involve stakeholders at any levels of the action, both in the public and in the private area.

EU chooses a sustainable and inclusive development, in harmony with principles of the CRPD: EU has become for the first time a ‘contracting party’ of a treaty on Human rights<sup>33</sup>. Recognized as a historical ratification, it

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<sup>29</sup> CRPD has a programmatic nature: its provisions require further action by the Parties. In fact, it doesn’t have unconditional and sufficiently precise content; it lacks the requirements that serve to produce direct effects in EU law (for the concept of direct efficacy see Court of Justice of the European Union, Judgment of February 5<sup>th</sup>, 1963, C-26 /62, *Van Gend en Loos*, in ECR 3). However, CJEU has stated several times (from the “Ring and Werge” case, judgment of April 11<sup>th</sup>, 2013, joined cases C-335/11 and C-337/11, in ECR Digital, April 2013) that the secondary law (regulations and directives in particular), should be interpreted in conformity with CRPD, recognizing the its interpretative effects. That issue is fine explained by D. FERRI, in *L’Unione europea e i diritti delle persone con disabilità: brevi riflessioni a vent’anni dalla prima ‘Strategia’*, Salute e diritto, Politiche sanitarie, vol. 17, No. 2, p. 123, April-June 2016.

<sup>30</sup> It focuses, firstly, on the obstacles to the exercise of rights and the need to eliminate them in favor of more accessibility. Through “Participation” is possible to remove the administrative and behavioral obstacles, which are causes of substantial inequalities. Secondly, another important objective is to enable PwD to enjoy all the benefits of EU citizenship for the benefit of the entire community.

<sup>31</sup> Strategy 2010-2010 provides for complementary action at European and national level, as well as in agreement with the EU Charter of Fundamental Rights and the non-discrimination policy (as provided for in the TFEU arts. 10 and 19).

<sup>32</sup> It recalls the Un Charter’s principles, as well as the rights and freedoms mentioned in the Universal Declaration of Human Rights and International Covenants; It reaffirms the need for PwD and their families to be guaranteed in their full enjoyment without discrimination based on disability. About this analysis, arts. 9 and 30 are relevant. The former focus on “accessibility” – <<to enable persons with disabilities to live independently and participate fully in all aspects of life>> – and the latter on the “participation” of PwD on an equal basis with others in cultural, recreational and sports life, as well as enjoyment of leisure.

<sup>33</sup> Council decision 2010/48/EC of November 26<sup>th</sup>, 2009 lodged on November 23<sup>rd</sup>, 2010.

represents for Member States an institutional and moral commitment to protect the rights of PwDs<sup>34</sup>.

To support the vision of tourism as a tool for the inclusion of PwDs, it is possible to mention the Treaty of Lisbon, signed in 2007; thanks to this treaty the European policy recognizes expressly the existence of a collective touristic area inside the primary law: tourism assumes a value of supranational interest<sup>35</sup>.

From a practical point of view, in the specific tourism sector, the success of these politics needs a greater moral and factual contribution by those who offers tourist services, primarily the transportation. The CRPD, i.e. asks Member States to guarantee that <<*those involved in the organization of recreational activities, tourism, leisure and sports*>> ensure access – and enjoyment – to all PwDs (art. 30, n.5, lett. e)<sup>36</sup>.

### 3. The Reasonableness of the Unequal Treatment: First Group Plc vs Paulley and the Sunset of "First Come, First Served" Rule on Buses

The reasonableness of disparity in treatment concerns interventions aimed to overcome differences not only economic but also social and cultural<sup>37</sup>. The

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<sup>34</sup> Ratification involves the integration into EU law of the CRPD, which assumes 'sub-constitutional' rank: in consideration of art. 216, paragraph 2, TFEU (<<*Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States*>>) it prevails over European Union acts. The road is well plotted, although someone believes that the goals of the Strategy 2010-2020 were partly disregarded. D. Ferri, (Note No 29), points out that the same UN Committee on the Rights of Persons with disabilities, which examined the initial EU report on the implementation of the CRPD (2006), had to recommend an acceleration of the procedure for adopting the new Anti-discrimination Directive (Proposal for a Council directive (July 2<sup>nd</sup>, 2008) on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM (2008) 426 final) and accessibility legislation including, in particular, the so-called *European Accessibility Act* [COM (2015) 615 final: See also [http://europa.eu/rapid/press-release\\_IP-15-6147\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6147_en.htm)], which is part of the various legislative initiatives of the strategy (Ahtonen A, Pardo R, The Accessibility Act – Using the single market to promote fundamental rights, European Policy Center, March 12<sup>th</sup>, 2013, available online: [http://www.epc.eu/pub\\_details.php?pub\\_id=3393](http://www.epc.eu/pub_details.php?pub_id=3393)).

<sup>35</sup> M. GESTRI – F. CASOLARE, *Il turismo nel trattato di Lisbona: un personaggio non più in cerca di autore*, in *Rivista Italiana di Diritto del Turismo*, 1, 2011, pp. 5-18; Cf. G. Gianna, *La tutela del viaggiatore*, Giuffrè, Milano, 2013, p. 15.

<sup>36</sup> The Italian Code of Tourism – D. LGs. May 23<sup>rd</sup>, 2011, No. 79 (O.J. No. 129 of June 6<sup>th</sup>, 2011), art. 3 No 1 – introduced, expressly, the accessible tourism principle claimed by art. 30 of CRPD, so that even people with disabilities could enjoy the tourist offer in a complete and autonomous way, receiving quality services without escalates on the price.

<sup>37</sup> P. PERLINGIERI, P. FEMIA, *Nozioni introduttive e principi fondamentali del diritto civile*, Edizioni Scientifiche Italiane, Napoli, 2004, p. 75 f., and P. PERGLINGERI, (Note No 3), p. 457, note No 103, on the Italian Constitutional Court judgement No. 54 in 1968, which stated that <<*nel giudizio sulla razionalità di una certa disciplina non si deve guardare soltanto alla posizione formale di chi ne è destinatario ma anche alla funzione od allo scopo a cui essa*

sense is defeating any active or passive form of discrimination<sup>38</sup>. So, it will be constitutionally legitimate the law favourable for subjects and categories of subjects particularly needy of the solidarity, because expressly envisaged, or because need to remove any kind of obstacles towards them (Italian Constitution, article 3.2). *Vice versa*, the law could prevent the exercise of the essential rights of some social categories – in strong position – to contrast any objective inferiority or inequality conditions<sup>39</sup>. It seems interesting to analyse a UK case useful to clarify this general issue: "Doug Paulley".

On the 24<sup>th</sup> February 2012 Doug Paulley, a man in a wheelchair, tried to take advantage of the bus service offered by *First Group*. At the bus stop, the driver asked Mr. Paulley to wait as a mother occupied the place reserved to wheelchairs with a stroller. This lady refused to change her seat, and this caused the impossibility for him to get on the bus. Consequently, he lost the connecting train to get his next destination.

Thus, he sued the First Group at Leeds County Court to obtain justice against the act of discrimination suffered as a person with disabilities. He won the cause, but the First Group appealed, subjecting the case under the decision of the Supreme Court.

On the 18th January 2017, the Supreme Court issued an historical sentence, which exceeded the principle of the "first come - first served", so far adopted by the transport companies. Transportation companies, in fact, must satisfy the needs of passengers on wheelchair. The judgement<sup>40</sup> states that drivers may stop the bus "*in order to persuade who does not want to leave the reserved seats to wheelchair passenger*" if they judge that refusal is unwarranted. Lord Neuberger, president of the Supreme Court, said that if the driver takes note of the refusal of the passenger who does not use the wheelchair, the denying policy of the transport service – to the user with disability – is "unjustifiable".

The Court also suggested that the law should be updated in order to be clearer towards the transport companies and their users. Transport companies

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*è preordinata*>>, it means that every legal discipline are based not only on the formal *status* of its recipient but also on its main – primary – goals. Disparities generating equal dignity and development of the persons are reasonable; every disparity is legitimate if it implements constitutional principles. P. PERLINGIERI, (Note No 3), compares it with A. CERRI, (Note No 4) p. 48 ff., for whom the reasonableness is a natural factor of human rationality.

<sup>38</sup> On the definition of discrimination see the Law March 1<sup>st</sup>, 2006, no 67, art. 2, No. 2: direct discrimination is when, for reasons related to disability, a person is treated less favorably than is, has been or would be treated a person who is not disabled, in a similar situation, and No. 3: indirect discrimination is when an apparently neutral disposition, criterion, practice, act, pact or behavior puts a person with disability at a disadvantage *status* in comparison with other people.

<sup>39</sup> Cf. P. PERLINGIERI (Note No 3), pp. 457-458, note No 105.

<sup>40</sup> *Hilary Term [2017] UKSC 4 - On appeal from: [2014] EWCA Civ 1573 – First Group Plc v Paulley – Judgment given on 18 January 2017 Heard on June 15<sup>th</sup>, 2016.*

*On web: [www.supremecourt.uk/cases/docs/uksc-2015-0025-judgment.pdf](http://www.supremecourt.uk/cases/docs/uksc-2015-0025-judgment.pdf).*

should adopt clear rules and, primarily, they should train their drivers to make them capable to remove any type of barrier opposed to the free enjoyment of the accessible transport service.

In relation to Paulley case and the drivers training, even the *Transport Committee*<sup>41</sup> highlighted how crucial is to guarantee a proper training course on disabilities, based on the EU Regulation 181/2011 – *inter alia* in accordance with the *Equality Act 2010*<sup>42</sup> – which provides with a mandatory training, asking Parliament to incorporate it into the national legislation<sup>43</sup>.

In conclusion this judgement is a "cultural revolution" thanks to which substantive equality, linked to the concrete case, takes shape. Accessible transportation service, indeed, is a critical factor for the life of PwDs, since it allows them to go to work, to go for shopping, and to visit friends and relatives. Just in West Yorkshire (UK) passengers with disabilities have made more than 5 million of travels between 2012 and 2013<sup>44</sup>.

In the next paragraph, the EU provisions on the transportation by bus, to highlight specific requirements to protect users with disability.

#### 4. Accessible Transportation by Bus: EU Regulation No 181/2011

*‘Disabled person’ or ‘person with reduced mobility’ means any person whose mobility is reduced when using transport as a result of any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or any other cause of disability because of the age and whose condition requires an appropriate attention and an adaptation to its particular needs. This is the meaning of disability defined by EU Regulation No*

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<sup>41</sup> The transport Committee is charged by the House of Commons to check the Transport Department. His formal mandate is to examine the expenses, administration and policy of the Department of Transport and its associated public bodies.

It consists of eleven members of Parliament, appointed by the House of Commons and chosen within the three major political parties. The Committee chooses its own topics of investigation. Depending on the subject matter, the external deadlines and the amount of oral evidence that the Committee decides to take, an investigation can last several months and give rise to a report to the Assembly; Other requests can simply consist of an oral testimony of daily duration that the Committee may decide to publish without making a report –

[www.parliament.uk/business/committees/committees-a-z/commons-select/transport-committee/role/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/transport-committee/role/).

<sup>42</sup> The Equality ACT requires reasonable solutions when a person with disabilities is disadvantaged compared to all others, in accordance with regulations or uses. This means that the stakeholders must adopt any measures to ensure persons with disabilities access to their services.

<sup>43</sup> As an effect of Brexit, the real risk in the United Kingdom is that the adoption of the regulations may be frustrated.

<sup>44</sup> On web: [www.equalityhumanrights.com/en/gwaith-achos-cyfreithiol/paulley-v-firstgroup-plc](http://www.equalityhumanrights.com/en/gwaith-achos-cyfreithiol/paulley-v-firstgroup-plc)

181/2011<sup>45</sup>. With this regulation, therefore, EU tries to give protection to the passengers of bus and coach transportation with disability. They are considered as weak subjects as all costumers are for their own nature, but also, and especially, because of structural, moral and psychological barriers placed in and by the society – according to the interpretation of the social model of disabilities. As already said, currently the transport by bus assumes relevance in our life, both as a daily displacement and for touristic purposes. Effectively, recent studies carried out by the research centre "*Transpol*" affirm that transport by bus is a very fluid market: in Italy the number of transactions recorded has been growing<sup>46</sup>, such as the number of bus companies.

Then, Regulation 181/2011 has become an indispensable landmark – a *vademecum* – for carriers, managers of terminals (terminal managing body) and tour operators to take it in consideration before, during and after the execution of their services, to protect the rights of passengers with disabilities or reduced mobility, but also to safeguard their responsibilities in case of complaints<sup>47</sup> and penalties<sup>48</sup>.

This regulation – whose main sources are TFEU (art. 91, par. 1, especially)<sup>49</sup>, CRPD (art. 9, 'Accessibility')<sup>50</sup>, and Charter of Fundamental

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<sup>45</sup> Art. 3, lett. j. This regulation changes Reg. No, 2006/2004.

<sup>46</sup> This monitoring activity shows the classical relations north-south, middle-north and middle-south of the Country.

<sup>47</sup> To guarantee their rights, appropriate complaint procedures are envisaged through a system established or arranged by the carrier, as said by *whereas* No. 20 of Regulation No 181/2011: <<Passengers should be able to exercise their rights by means of appropriate complaint procedures implemented by carriers...>>; No. 22: <<...a complaint concerning assistance should preferably be addressed to the body or bodies designated for the enforcement of this Regulation...>>. There could be, therefore, a double system of transmission of the complaints provided by this regulation. The first one, through the carriers (art. 27); the second one, through a national body designated by the Member State (art. 28). So, <<carriers shall set up or have in place a complaint handling mechanism for the rights and obligations set out in this Regulation>> (art. 26, and cf. art. 28, 1, 3). About timeline: <<Within 1 month of receiving the complaint, the carrier shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered>>. In the latter case the new deadline is just a month (art. 27).

<sup>48</sup> Effective, proportionate, and dissuasive penalties are applicable and ensured by Member States to infringements of the regulation above mentioned. and shall ensure its application (*whereas* 24 and art. 31, Regulation No 181/2011).

<sup>49</sup> For applying of art. 90 (according to which the objectives of the treaties are pursued under a common transport policy) and considering the aspects of transport, the European Parliament and the Council, after consulting the Economic and Social Committee and the Committee of the Regions, establish common rules applicable to transport, and measures to improve safety as well as any other useful provisions.

<sup>50</sup> In order to offer people with disabilities or reduced mobility the possibility of take the bus or carry out a coach trips under equal conditions with other citizens, it is necessary to establish rules on non-discrimination and assistance during the journey. About that also, Directive 2003/59/EC of the European Parliament and of the Council of July 15<sup>th</sup>, 2003: on the

Rights<sup>51</sup> – shows the primary needs of passengers with disabilities or reduced mobility that must be safeguarded by whom offers a transport service. In this context, the request of proper training programs for employees appears as a base for the accessibility in transportation<sup>52</sup>, as well as the importance of the organisations representative of PwDs or with reduced mobility as significant landmarks in preparing the content of the disability - related training<sup>53</sup>.

What expressly the EU policy requires is that the stakeholders provide more attention and care in each operation, as ticketing, booking<sup>54</sup> and terminal managing<sup>55</sup>; assistance free of charge<sup>56</sup>, especially in case of cancellation or delay on departure<sup>57</sup>, in the designated stations, and on board<sup>58</sup>; information on any alternative services managed by the carrier<sup>59</sup>, on access conditions<sup>60</sup>, and on the service of assistance<sup>61</sup>, or finally, on cancellation or delay at departure<sup>62</sup>.

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training of drivers of certain road vehicles used for the carriage of goods or passengers (OJ L 226, 10.9.2003, p. 4); Council Directive 90/314/EEC of 13 June 1990: concerning travel, holidays and all-inclusive holidays (OJ L 158, 23.6.1990, p. 59).

<sup>51</sup>EU recognizes rights, liberties and principles enshrined in the Charter of Fundamental Rights of the European Union of 7 December 2000, adapted on December 12<sup>th</sup>, 2007 in Strasbourg, which has the same legal force as the Treaties (Art. 6 TFEU).

<sup>52</sup> *Whereas* 12, Regulation No 181/2011, in order to respond to the PwD or reduced mobility needs, it provide that <<disability awareness training could be provided as a part of the initial qualification or periodic training as referred to in Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers>>.

<sup>53</sup> *Whereas* 13, on the training also, the art. 16 par. 1: it specifies that carriers and terminal managing bodies must ensuring training of their personnel, drivers or other than it, which provide direct assistance to persons with disabilities or reduced mobility (as indicated also into Annex II, Parts A and B).

<sup>54</sup> Cf. art. 9, Regulation No 181/2011: carriers, travel agents, and tour operators do not refuse to accept a reservation from, or to take on board, a person on the ground of disability or reduced mobility, and, they have to offer them these services at no additional charges.

<sup>55</sup> Member States shall designate bus stations where assistance to PwD or reduced mobility is provided (cf. art. 12, *ibid*).

<sup>56</sup> Cf. art. 13, *ibid*: carriers and terminal managing bodies, at terminals designated by the Member States, as well as on board buses, must give assistance free of charge to PwD.

<sup>57</sup> Cf. art. 21, *ibid*.

<sup>58</sup> Cf. Annex I. b, *ibid*, which shows a series of assistance measures "on board", to ensure that weak travelers enjoy a comfortable journey in relation to their disability or reduced mobility.

<sup>59</sup> Cf. art. 10, par. 2, *ibid*: in case of an unaccepted reservation or a ticket unissued.

<sup>60</sup> Cf. art. 11, *ibid*: in collaboration with organizations representing PwD or reduced mobility, the carriers and terminal managing bodies establish the safety requirements, on which these non-discriminatory access conditions are based. It shall be made publicly available by carriers and terminal managing bodies physically or on the Internet, in accessible formats on request.

<sup>61</sup> Cf. arts. 14 and 15, *ibid*: travel agents or tour operators shall cooperate with the carrier or the terminal managing bodies, by facilitating the transmission of information relating to the need, and measure of assistance to allow PwD or reduced mobility to use the service.

<sup>62</sup> Cf. art. 20, *ibid*: carriers or, where appropriate, terminal managing bodies, shall inform the passengers on the cancellation or delay at departure, and they do it as soon as possible and

## 5. Conclusion

In the name of the substantive equality<sup>63</sup>, policies and legal operators should regulate market, both touristic<sup>64</sup> and of the transports in such a way to ensure respect for the principle of equality and social justice. Effectively, Italian *jurisprudence* only recently has reserved acceptable attention on it<sup>65</sup>, but also, it must be considered that <<equality does not mean egalitarianism: it has not demanded the equality of all in all, regardless of the merits and skills>><sup>66</sup>.

For a *Vision* of a fully accessible tourism, European policy has intervened with its regulations<sup>67</sup> in order to ensure a system of protection that is common among the Member States. Tourist and transport stakeholders must follow a set of coherent principles and rights, that EU policy defined with its regulations, to protect all travellers, particularly those who are vulnerable: accessibility, assistance, information, in favour of PwDs.

Moreover, it appears the necessity of training programmes for personnel employed in transportation companies. In effect, they must prove sensitivity and ability to approach passenger with disability or with reduced mobility and, of course, also assistance capacity<sup>68</sup>.

Finally, the European policies must be encouraged<sup>69</sup> to support cooperation between carriers and/or the terminal managing bodies of stations and all organizations representative of PwDs or with reduced mobility, through monitoring activities, social projects and research studies.

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in accessible formats. Even more, they shall make reasonable efforts to inform the passengers concerned of alternative connections if they miss a connecting service due to a cancellation or delay.

<sup>63</sup> Article 3 of Italian Constitution need unitary interpretation: <<equal social dignity and equality before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions>>, linked to the duty of the (Italian) Republic <<to remove all obstacles of an economic and social nature which constrain the freedom and equality of citizens, prevent the full development of the human person and the effective participation of all workers in the political, economic, and social development of the country>>, cf. P. PERLINGIERI, (Note No 3) p. 448 f.

<sup>64</sup> Treaty of Lisbon, 2007.

<sup>65</sup> Cf. P. PERLINGIERI, (Note No 3), p. 449.

<sup>66</sup> *Ibid*, p. 458, p. 458, related to A. CERRI, *Eguaglianza giuridica ed egualitarismo*, L'Aquila-Roma, 1984, p. 24 ff., who compares on the topic of "different treatment of equal situations as expressions of the principle of equality", with M. Aini, *Azioni positive e principio d'eguaglianza*, in *Giur. cost.*, 1992, I, p. 582 ff.

<sup>67</sup> Reg. EU No. 181/2011; Reg. UE No. 1177/2010; Reg. UE No. 1371/2007; Reg. UE No. 1107/2006.

<sup>68</sup> Cf. art. 16 and Annex II EU regulation No. 181/2011. Annex like that are into each other regulation related on accessible transport, which are mentioned above.

<sup>69</sup> In Italy the Tourism Code have also implemented it; cf. art. 3, n. 2 D. Lgs. May 23<sup>rd</sup>, 2011, no 79 (O.J. N. 129 of June 6<sup>th</sup>, 2011).

Tourism and transportation must give priority to ethical issues: the only ones able to combine economic efficiency and human rights, market, and democracy<sup>70</sup>. So, stakeholders of these markets may realize the most-desired "cultural revolution", in which the law plays a key role thanks by its primary power to regulate the society<sup>71</sup>.

This is the time to show that the right is capable of being a carrier of sensibility and principles residing in those things that do not have a price and that are <<common elements of social structures>><sup>72</sup>.

## References

[1] Ainis, M. (1992) Azioni positive e principio d'eguaglianza. *Giur. Cost.*, I, 582

[2] Bobbio, N. (1995) *Eguaglianza e libertà*. Torino

[3] Barbuto, R.; Biggeri, M.; Griffo, G. (2011). Life project, peer counselling and self-help groups as tools to expand capabilities, agency and human rights, *Alter - European Journal of Disability research*, *Revue européen de recherche sur le handicap*, vol. 5, 3, 192-205.

[4] Buchanan, J. M. (1990). Buona economia – Cattivo diritto, *Libertà nel contratto costituzionale*. Milano: Il Saggiatore.

[5] Calamandrei, P. (1950). *Introduzione storica sulla Costituente*. Calamandrei e Levi, I, Firenze: Comm. Sist. Cost. it.

[6] Campanella, F. (1992). Lo Stato e il mercato. Le idee e i miti di un passato più o meno prossimo, in *Pubblico e privato nel sistema economico a cura di S. Berena*. Milano: Giuffrè.

[7] Cerri, A. (1984). *Eguaglianza giuridica ed egualitarismo*. L'Aquila-Roma: Japadre.

[8] Cerri, A. (1972). Regime delle questue: violazione del principio di eguaglianza e tutela del diritto alla riservatezza. *Giur. Cost.*

[9] Dahrendorf, R. (1979) *Lebenschancen. Anläufe zur sozialen und politischen Theorie*. Suhrkamp Verlag, Frankfurt am Main – (1995), Roma – Bari, Laterza.

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<sup>70</sup> Cf. F. CAMPANELLA, *Lo Stato e il mercato. Le idee e i miti di un passato più o meno prossimo*, edited by S. Beretta, Milan, 1992, p. 99.

<sup>71</sup> Cf. P. PERLINGIERI, (Note No 7) p. 84 ff.

<sup>72</sup> R. DAHRENDORF, *Lebenschancen. Anläufe zur sozialen und politischen Theorie*. 1979, Suhrkamp Verlag, Frankfurt am Main, and Roma – Bari, Laterza, 1995.

- [10] Dworkin, R. (1993). Eguaglianza. Roma: Enc. Sc. Soc. Treccani, III.
- [11] Ferrajoli, L. (1990). Diritto e ragione, 2° ed., Roma-Bari: Laterza.
- [12] Ferrarese, M. R. (1992). Diritto e mercato. Il caso degli Stati Uniti. Torino: Giappichelli.
- [13] Ferri, D. (2016). L'Unione europea e i diritti delle persone con disabilità: brevi riflessioni a vent'anni dalla prima 'Strategia', Salute e diritto, Politiche sanitarie. Il Pensiero scientifico. Salute e diritto – Politiche sanitarie. 17, 2, 123.
- [14] Gestri M. – Casolari, F. (2011). Il turismo nel trattato di Lisbona: un personaggio non più in cerca di autore. Rivista Italiana di Diritto del Turismo. 1, 5-18
- [15] Gianformaggio, L. (1997). L'eguaglianza e le norme, in L. Gianformaggio e M. Jori (a cura di), Milano: Scritti Scarpelli.
- [16] Gianna, G. (2013). La tutela del viaggiatore, Milano: Giuffrè.
- [17] Paladin, L. (1961). In tema di leggi personali. Giur. cost.
- [18] Paladin, L. (1960). Una questione di eguaglianza nell'accesso ai pubblici uffici. Giur. cost., nota a sentenza della Corte Costituzionale, in Giur. Cost., 147
- [19] Perlingieri, P. (1982). Economia in bilico, tra pubblico e privato: una formula per la crisi? in Riv. di diritto dell'impresa, 2, 231
- [20] Perlingieri, P. (1980). Eguaglianza, Capacità contributiva e diritto civile. Torino.
- [21] Perlingieri, P. (2006). Il diritto civile nella legalità costituzionale, secondo il sistema italo comunitario delle fonti, Tomo II, III edizione. Napoli: Edizioni Scientifiche Italiane.
- [22] Perlingieri, P. (1995). Iniziativa economica, solidarietà sociale e diritti della persona. Rass. dir. civ.
- [23] Perlingieri P., Femia P. (2004). Nozioni introduttive e principi fondamentali del diritto civile. Napoli: Edizioni Scientifiche Italiane.
- [24] Scarpelli, U. (1988). Classi logiche e discriminazioni tra i sessi. Lav. dir.
- [25] Sen, A. (2002). Etica ed economia. Roma-Bari: Laterza.
- [26] Waddington L., Diller M. (2002). Tensions and coherence in disability policy: the uneasy relationship between social welfare and civil rights models

of disability in American, European and international employment law. Disability rights law and policy. Ardsley: Transnational Publishers

[27] Zamagni, S., Bruni, L. (2015). L'economia civile, un'altra idea di mercato. Bologna: Il Mulino.